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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/762,387

01/21/2004

Christopher Pearce

009.4002

4868

7590

05/01/2006

MEDTRONIC EMERGENCY RESPONSE SYSTEMS INC.
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EXAMINER

JASTRZAB, JEFFREY R

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,387

Applicant(s)

PEARCE ET AL.

Examiner

Jeffrey R. Jastrzab

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments and amendments filed 1/26/06, with respect to the rejection(s) of claim(s) 1-78 under 35 USC 102 and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made, necessitated by the amendments, in view of Crosby et al., U.S. 2005/0004485.

Claim Rejections - 35 USC § 103

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-78 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Crosby et al., U.S. 2005/0004485. Crosby et al. teach a system for detecting and diagnosing cardiac risk, including ischemia, by detecting the patient's ECG and combining with data from in vitro

testing such as cardiac marker tests. The reference mentions past AHA documentation that indicates that it is known protocol to first use ECG data for determining clinical symptoms as a first diagnostic, and then if the ECG is normal or not helpful, resorting to, i.e. prompting a physician to, performing cardiac marker tests as a second diagnostic tool (parag. 58). Furthermore, Crosby teaches several embodiments, which automatically perform both diagnostic tests, but appears to include an embodiment at parag. 62, that, after ECG analysis alone, resorts to in vitro testing if a condition exists. This latter embodiment would amount to a prompting to perform and enter diagnostic data (i.e. a test strip per parag. 72). As such it would seem that a physical prompt would be an inherent part of the Crosby et al. system. Alternatively, even if an actual prompt does not appear on a screen, or an audible or other prompt is given in this system, it would have been an obvious design choice to have altered the automatic steps of Crosby et al. to make them manual, or in a prompted order, given that fact that it is AHA protocol to perform the diagnostics in the order as claimed. Changing order or the timing of the diagnostic steps lacks patentable moment.

As to Claim 3, the strip reader would amount to a user interface (parag 72).

As to Claim 6 and the like, although a treatment is not displayed, determining treatment is an inherent step of physician protocol. Making such a step automatic is well known in the art and incorporation into the Crosby device would have accordingly been a matter of design choice.

As to Claim 7, displays are discussed at parag 75.

As to Claim 19, chest pain is a physiological state, parag. 64.

As to Claim 20 and the like, blood pressure would be an intrinsic part of the patient record and hence making it a part of the historical data used by the system would have been obvious to skilled physicians.

It would appear that the addition of time/date data would be inherent to Crosby's system and method. Further, the generation of a request for results after the strip test, e.g. Claim 56, would have been inherent to the system operation.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 2004/0138574 teaches marker testing as a backup to ECG diagnosis.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

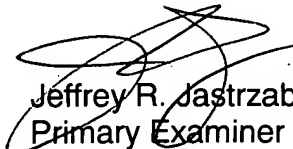
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (571) 272-4947. The examiner can normally be reached on M-W 5:30 a.m. to 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeffrey R. Jastrzab
Primary Examiner
Art Unit 3762

7/26/04